



INDIA'S ANTI-CORRUPTION LAW: PROBLEMS AND CHALLENGES

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ABSTRACT

Corruption puts the poor in a position of double jeopardy because they are the ones who are most affected by economic decline, are the ones who are most reliant on the provision of public services, and are the ones who are least able to pay the additional costs associated with bribery, fraud, and the misappropriation of economic privileges. This article includes an analysis of the current state of corruption in the country, the many forms of bribery that have been encountered, and the attempts that have been taken by the government to implement a compliance programme. It also shows the economic impact of corruption, corruption by industry, and how a lack of enforcement of existing laws has resulted in the proliferation of corrupt practises. What is particularly intriguing to learn about in the research is the various methods through which manipulations are carried out for short-term gain. This article will be dealing with the various issues of the amended Act.

KEYWORDS: Law, Corruption, India, Fraud, Bribery.

INTRODUCTION:

The Prevention of Corruption Act is the primary legislation in India that establishes punishments for public workers who commit acts of corruption, as well as those who aid and abet such acts. The word "public servant" is defined broadly in the Prevention of Corruption Act to include "any individual in the Government's service or pay, or remunerated by the Government for performing a public obligation."

Until 2018, the Prevention of Corruption Act exclusively considered and criminalised bribe-taking by public officials, not bribe-giving, thereby excluding private-sector bribery.

With India's booming economy and foreign investment, there was a pressing need to bring the country's anti-corruption legal framework in line with current international trends, and revisions to the existing Prevention of Corruption Act were recommended.

The Prevention of Corruption Act was amended in 2018 by the Prevention of Corruption (Amendment) Act, which sought to prospectively include, within its scope, commercial organisations (including companies) and their employees who are involved in the payment of bribes to public servants in order to (a) obtain or retain business for such a commercial organisation; or (b) obtain or retain public office for such a commercial organisation.

Unless the commercial organisation can prove that it had adequate procedures in place to prevent such conduct by persons associated with it, the individual (being the officer/employee of such commercial organisation) involved in the payment of bribe and the commercial organisation will be held liable under the Prevention of Corruption Act. However, if the offence is proven, the individual/employee of such commercial organisation may still be held accountable.

OBJECTIVES OF STUDY:

1. To find out as to how corrupt public servants often escape prosecution and how public servants are falsely trapped.
2. To understand the role of the Central Vigilance Commission with respect to recommendation of initiating punitive action.

RESEARCH ANALYSIS:

The Doctrinal technique of study is used in this project. For the purpose of doing this research, several articles were consulted.

Although the recent update to the PCA tightened existing requirements, it still contains a number of flaws, which I will describe in the following paragraphs.

To begin, one must comprehend the CVC's role in combating corruption. Although the CVC was established on the recommendations of the Santhanam Committee, it can only supervise the CBI and cannot order it to probe any specific case because the CBI is under DOPT's administrative jurisdiction. In the case of Subramanian Swamy v. Director, CBI, it was decided that Section 6-A (1) of the DSPE Act was unconstitutional and violated Article 14 of the Indian Constitution. This provision dealt with the Central Government's requirement for prior approval to conduct an inquiry or investigate any alleged offence under

PCA 1988 involving Central Government officers of the rank of Joint Secretary and above.

The Supreme Court's decision in the above case now authorises an investigation of public employees above the rank of JS without first obtaining permission from the relevant authorities, but there's a catch. No police officer shall conduct any enquiry, inquiry, or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is related to any recommendation made or decision taken by such public servant in the discharge of his official functions or duties, according to the recently amended PCA 2018.

While the aforementioned rule gives honest public officials immunity, it makes it impossible to probe corrupt public servants until they are caught red-handed in bribery situations. Despite the fact that my analysis of the structure of India's anti-corruption authorities may appear ludicrous, the chart below shows the reporting authority of each organisation.

CBI ---- DOPT ---- PMO:

It's self-evident, and it's the hard fact. The CBI is a caged bird, and raids on opposition leaders' homes occur just days before elections. The CVC is merely a consultative body, with the Chief Vigilance Commissioner and other Vigilance Commissioners being nominated by the Indian government. These constitutional authority used to be members of the IAS and the Central Government's elite. In practise, these entities' authority is completely based on the relationships between these constitutional authorities and the committee that appoints them.

This leads me to my first research topic, which is why permission is required to probe a public figure. Officers are frequently accused of spurious corruption allegations, and Section 17A of the PCA 2018 protects them. Whatever the case may be, I believe it is a reasonable provision with benefits and drawbacks. Let's say the CBI wants to investigate a police officer on suspicion of corruption. They are attempting to falsely apprehend a cop who is working with another person.

This has been the CBI's ploy from its beginnings. Finally, due to a lack of evidence, the CBI is unable to prosecute the individual in a court of law. Because of the investigation into the officer, his promotions, raises, and benefits have been halted pending the conclusion of the court case. Court cases go on for years, and the officer loses his benefits. This is where the new part will come in handy. An officer must make several policy judgments, some of which may not generate the desired consequences.

This part has certain drawbacks as well. Let's pretend the officer is a corrupt official. The Police/CBI/ACB would now seek approval from the responsible authorities to investigate the officer. The Minister, together with the officer, is the competent authority and is corrupt. He has made it clear that he would not allow the investigating agency to conduct an investigation. This is one of the new section 17A's drawbacks.

Section 8, sub-section 1, clauses 1 and 2 imply that a person who pays a bribe to a public official shall be prosecuted under the PCA 2018 unless and until he reports that he was forced to do so. He has seven days to report this to the police.

It was established in the case of K. Veeraswamy v. Union of India that no criminal

case can be brought against a judge of a High Court, a Chief Justice of a High Court, or a judge of the Supreme Court without the Government consulting the Chief Justice of India. Despite the fact that this case dealt with PCA in the context of the court, the majority decision expanded its scope to include criminal matters as well.

Giving immunity to officials is likewise justified if the judiciary can take such a step. It is still a contentious issue in India today. It has been observed that the prosecution frequently fails to prove evidence in court in situations involving corruption and bribery. In the case of *P. Satyanarayana Murthy v. State of Andhra Pradesh*, it was held that simply accepting money does not constitute illicit gratification as defined by Sections 7 and 13 of the PCA. The appellant's conviction had been upheld by the Andhra Pradesh High Court, but the Supreme Court overturned that decision. This case was heard for the first time in 2009 and was eventually decided in 2015. It's easy to understand how instances become stretched.

As a result, we can see that both demand and acceptance are required to be convicted under PCA 1988 Sections 7 and 13(1)(d)(I). Previously, criminal misconduct was defined as the habitual gaining of pleasure other than legal remuneration, acquisition of a pecuniary advantage, and so on under Section 13 of the PCA 1988. The former has been replaced by misappropriation of property and collecting assets disproportionate to one's recognised sources of income under the PCA 2018.

Because it specified that if a public worker secures for any person any valuable thing or monetary profit without any public interest, it would constitute criminal misbehaviour, Section 13(1)(d)(iii) has frequently been used to harass public servants. If this is the case, any decision made by a bureaucrat will benefit one party or the other. In my perspective, the modification to this clause offers bureaucrats the freedom to make well-informed judgments without fear.

CONCLUSION AND SUGGESTIONS

Corruption is a threat that is difficult to eliminate, but not impossible to mitigate. The government's substandard salaries are the key motivator for officials to engage in corruption. The need for more will not abate until and until the government makes significant changes to its employee compensation structure. The average person considers paying an officer a particular fee to complete a task to be a routine task. It's only common sense.

If someone is willing to pay the bribe demanded by the officer in order to complete the work, the identical file that normally takes months to clear is cleared in days. Not everyone has the ability to take on the system like Prashant Bhushan or Arvind Kejriwal. Without a doubt, the Anti-Corruption Law is a positive step forward, however several elements of the PCA make it impossible to eradicate corruption.

Section 17A is highly contentious, as it forbids even the inquiry process without prior clearance. Despite the fact that this section provides police with some immunity, it is justifiable for a variety of reasons. To begin with, it is well known that officers are subjected to frivolous complaints to the CVC. Second, investigating organisations simply wait for a chance to repair officers in order to appease political leaders. If a departmental investigation is launched into an officer who has done nothing illegal but the allegations prove otherwise, his promotions, allowances, increments, and benefits are all put on hold until the investigation is completed.

The investigation reveals that he is guilty. In a court of law, he challenges the same. He eventually wins the lawsuit, and the Court grants him all of his benefits retroactively. He may have won a case that took years to resolve, but the most lucrative years of his career have been wiped clean because of an unproven charge. This is when the 17A supplement comes in handy.

There will always be concerns and obstacles relating to corruption, and addressing them would necessitate significant reforms, which I have suggested below:

- Increase the pay of government employees.
- Ensure that people who file spurious complaints against public officials face severe consequences.
- Amend the PCA's Section 2 (d).

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